IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1285 OF 1999

Sangli Miraj Kupwad City Municipal Corporation .. Petitioner

versus

1. Competent Authority and Dy.Collector and ors ... Respondents

Mr.N.V.Walawalkar for Petitioner

Ms.S.S.Bhende, Assistant Government Pleader for for Respondent

Mr.P.R.Arjunwadkar for Respondent no.3

CORAM : S.B.MHASE AND D.G.KARNIK, JJ

DATED : 23rd February, 2006

P.C.

1. Heard.

2. By this petition the petitioner the Sangli Miraj Kupwad City Municipal Corporation challenges the order dated 26th February, 1998 passed by the respondent no.4 -State of Maharashtra as well as the order dated 14th September, 1998 passed by the respondent no. 2 Collector cancelling the allotment of part of the land allotted to it under

section 23 of the Urban Land (Ceiling and Regulation) Act, 1976 (for short the U.L.C. Act).

3. At the outset, we would like to point that we feel handicapped because a copy of the initial order of allotment dated 18th February, 1980 under which the land bearing Survey nos. 261/A1,1C and 262/2B and 261/3B admeasuring 10,962 sq.meters (for short the land) was allotted to the petitioner under the provisions of section 23 of the ULC Act was not produced before us. The petitioner says that it has misplaced it and the State or the Collector do not have a copy. However, the learned counsel for the petitioner as well as the learned counsel for the respondent nos. 1 and 4 state that the aforesaid land were acquired by the state government under the provisions of the ULC Act and was allotted to the petitioner under section 23 of the ULC Act for the purpose of establishment of a primary school and a playground. As the fact of allotment of the land to the petitioner under section 23 of the ULC Act is thus not in dispute we would proceed on the assumption that the land was so allotted.

4. The said land bearing Survey nos. 161/A, 1C, 162/2B and 261/3B of Sangli Miraj Kupwad City Municipal Corporation was acquired by the

government under the provisions of the ULC Act. On an application of the petitioner, the land was allotted to the petitioner for the purpose of a primary school and a playground subject to payment of Rs.68,03,258.01/- and along with few other lands were allotted to the petitioner for construction of a primary school and a playground subject to payment of the occupancy price of Rs.68,03,258.01. It appears that the petitioner did not pay the entire occupancy price and for the total land allotted to it. In the meanwhile, in the year 1997 or thereabout the respondent no. 3 applied to the government for allotment of some land at Sangli for establishment of a sports complex. The then Deputy Chief Minister assured that some land would be allotted to the respondent no. 3 for establishment of a sports complex. Government machinery swiftly moved thereafter and it was proposed by the administration to the goverment that a part of the land allotted to the petitioner to the extent of 2762 sq.meters can be withdrawn on the ground of breach of conditions of allotment and allotted to the respondent no. 3. This was done without notice to the petitioner which was completely in dark about the move of the government to withdraw the part of its land and allot it to respondent no.3. Thereafter, on 14th September, 1998 the respondent no. 2 passed an

order stating that the petitioner had not used the said land for the purpose for which it was allotted nor had paid the full price for the allotment of the total lands and therefore part of the land to the extent of 2762 sq.meters out of the land allotted to the petitioner was withdrawn for breach of the conditions and allotted to the respondent no.3. The said order dated 14th September, 1998 mentions that the order was passed in pursuance of the earlier order dated 26th February, 1998 of the Under Secretary. According to the petitioner, the order dated 26th February, 1998 was never served on the petitioner and contents of it are not known to it. However, since the impugned order dated 14th September, 1998 refers to the earlier order dated 26th February, 1998 that is also impugned in this writ petition.

5. Though a number of points were urged in support of the petition, we are of the view that it is not necessary to refer to all of them as in our view, the impugned order is required to be set aside being clearly contrary to the provisions of sub-section 3 of section 23 of the ULC Act.

6. Section 23 of the ULC Act provides for disposal of vacant land acquired under the ULC

Act. Sub-section 1 of section 23 enables the state government to allot the land which is acquired under the provisions of the ULC Act to anybody for the purpose of an industry. It further provides that the land in excess of the ceiling limit may also be allotted for the purpose of an industry and it would be lawful for the allottee to hold the land so allotted though it is in excess of the ceiling limit. Sub-section 2 of section 23 of the ULC Act empowers the government to impose conditions for allotment including a condition that an industry shall be put up or residential accommodation shall be provided for as stipulated in the allotment order within a stipulated time. Proviso to sub-section 2 of section 23 permits the government to extend the time limit fixed by the allotment order for construction of an industry or construction of a residential accommodation. Sub-section 3 empowers a government to cancell the allotment of the land for breach of any of the conditions of allotment. Sub-section 3 is important and is quoted below :

> " (3) Where any condition imposed in an order of allotment is not complied with by the allottee, the State Government shall, after giving an opportunity to the allotee to be heard in the matter, cancell the allotment with effect from the date of the non-compliance of such conditiion and the land allotted shall revest in the State

Government free from all encumbrances. "

7. A bare reading of sub-section 3 would show that the order for cancellation of the allotment can be made only after giving an opportunity to the allottee to be heard in the matter. No order for cancellation of the allotment can be passed without hearing the allottee. In the present case, no hearing was given to the petitioner before cancelling the allotment. In para 20 of the petition, the petitioner has specifically averred that no show cause notice was issued to the petitioner before passing of the impugned order nor was it heard. This averment is not denied in the affidavit in reply. Even at the hearing of the petition, the learned Assistant Government Pleader appearing for the respondent nos. 1 and 2 fairly stated that no hearing was given to the petitioner before passing of the impugned order. The impugned order cancelling the allotment of a part of the land allotted to the petitioner for the alleged breach was passed without hearing the petitioner and contrary to the provisions of sub-section 3 of section 23. The petition needs to be allowed on this short ground. Needless to say that this order would not prevent the respondent nos. 1,2 and 4 to pass a fresh

order in accordance with law after granting an hearing to the petitioner.

8. We are informed that in accordance with the order passed at the time of admission, the petitioner has deposited a sum of Rs.6.9 lacs (approximately) in this court towards the price of the said land. He further states that the said amount of Rs.6.9 lacs is the full price of the said land. We need not go in to this contention in this petition. The petitioner would be free to satisfy the government about the non-existence of any breach in the inquiry under section 23 (3) of the ULC Act in the event the government proposes to take any action against the petitioner.

9. For these reasons, the petition is allowed. The impugned order is set aside. The government shall restore the possession of the said land to the petitioner if the same has already been taken over.

(D.G. KARNIK, J) **(S.B.MHASE, J)**

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